

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "**Agreement**"), dated April 16, 2018 (the "**Effective Date**"), is by and between UnaMesa Association, a California nonprofit corporation with offices at 654 Gilman Street, Palo Alto, CA 94301, as the fiscal sponsor for InPlay, a project of UnaMesa (hereinafter collectively referred to as "**InPlay**"), and the Mountain View Whisman School District (MVWSD), with offices at 750 San Pierre Way, Mountain View, CA 94043 (hereinafter referred to as "**Client**").

1. **ENGAGEMENT:**

InPlay shall provide nonexclusive information technology professional services to Client as described in one or more sequentially numbered Statements of Work mutually executed by InPlay and Client, which shall be appended to this Agreement upon execution ("**Statements of Work**").

2. **SERVICES AND FEES:**

a. Statements of Work shall be used as work orders under this Agreement, shall be considered part of this Agreement, and shall be subject to the terms and conditions herein. Statements of Work will contain their own individual work schedules, identification of deliverables, and payment schedules. The initial Statement of Work is incorporated in this Agreement as "Appendix 1: Statement of Work." InPlay shall not have any obligation to perform any services pursuant to this Agreement except as expressly set forth in a Statement of Work.

b. All fees and the payment schedule shall be set forth on the applicable Statement of Work. If any fees are not received by InPlay on or before the due date then, in addition to its other rights and remedies, InPlay may (i) charge Client a late fee at the rate equal to the lesser of (a) 1.5% of the outstanding balance per month or portion thereof or (b) the maximum late fee permitted by law from the date such payment was due until the date paid and/or (ii) suspend performance of the services until full payment is received.

3. **EXPENSES:**

Client shall reimburse InPlay for all reasonably incurred expenses that are pre-approved in Statements of Work related to the provision of services under this Agreement. InPlay shall provide Client with receipts or other reasonable evidence of such expenses.

4. **OWNERSHIP AND PRE-EXISTING MATERIALS:**

a. **Ownership of Work Product.** All work product, materials, notes, records, drawings, designs, inventions, improvements, developments and discoveries conceived, made or discovered by InPlay, solely or in collaboration with others, pursuant to work performed under this Agreement together with all intellectual property rights associated therewith or incorporated therein (hereinafter "**Work Product**") shall be and remain the exclusive property of InPlay. The final versions of the Work Product delivered to Client under this Agreement or a Statement of Work shall be referred to herein as "**Deliverables**."

b. Grant of License. Subject to InPlay's receipt of full payment of all applicable fees set forth in the applicable Statement of Work, InPlay shall grant Client an irrevocable, perpetual, nonexclusive, royalty-free right and license to use, display, transmit, distribute, perform and reproduce those portions of the Deliverables solely as is necessary to (i) demonstrate and market the Deliverables to Client's end users; (ii) modify, translate and create derivative works from the Deliverables solely as necessary to maintain and further develop the Deliverables for use by Client to deliver services to its end users; and (iii) allow Client's end users to use the Deliverables as intended by Client (the foregoing to be known as the "**Work Product License**").

c. Client Materials and Data. If Client provides any materials or data to InPlay, then all of the foregoing shall remain the exclusive property of Client. Client hereby grants InPlay a (a) nonexclusive, royalty-free right and license to use all such material, data, and brand logo solely to perform the services for Client and (b) an irrevocable, perpetual, nonexclusive, royalty-free right and license to use any non-personally identifiable data for any purpose. For purposes of clarification, as between InPlay and Client, any data that InPlay receives from any of Client's end users shall remain the exclusive property of InPlay.

d. Restrictions. Client understands that its use of the Deliverables are solely for Client's business purposes. Except as permitted by Section 4(b), Client may not sell, license, sublicense or otherwise distribute any Deliverables to any third party. Client agrees that it will not use any Deliverables to provide any outsourced consulting services, development services, design services or engineering services to any third party in competition with InPlay. Client agrees to reproduce and include any copyright or other proprietary rights notices of InPlay in all copies, in whole or in part, of any Deliverables and take all reasonable steps to ensure that its distributors and third parties who have access to source code of any Deliverables conform to the terms and conditions of this Agreement. Client shall be liable for any breach of the restrictions of this Agreement by a third party given access to any Deliverables by Client.

5. PROPRIETARY INFORMATION; CONFIDENTIALITY:

a. Proprietary Information Defined. During the term of this Agreement and in the course of InPlay's performance hereunder, InPlay may receive confidential and proprietary information relating to Client's business. Such confidential and proprietary information shall include any non-public proprietary information of Client to which InPlay is exposed during the term of this Agreement including, but not limited to, information supplied to InPlay with the legend "Confidential" or "Proprietary," Client's marketing strategies, Client materials or data, Client's financial information, donor lists and related information, Client's internal organization, employee and consultant information, Client designs, artwork, graphics, content, Client's technology, and information of third parties as to which Client has an obligation of confidentiality (all of the above collectively referred to as "**Proprietary Information**"). Proprietary Information shall not include the following: (i) information that at the time of disclosure was in the public domain; (ii) information that became part of the public domain by means other than InPlay's disclosure; (iii) information that was disclosed by Client to a third party without obligation of confidentiality; and (iv) information that was known to InPlay prior to the time InPlay provided the services as evidenced by documentation possessed by InPlay.

b. Restrictions on Use and Disclosure. InPlay acknowledges the confidential character of the Proprietary Information, and agrees that the Proprietary Information is the sole, exclusive and extremely valuable property of Client. Accordingly, InPlay agrees not to use the Proprietary Information except in the performance of this Agreement including any Statement of Work, and not to disclose all or any part of the Proprietary Information in any form to any third party, either during or after the term of this Agreement, without the prior written consent of Client. Upon termination of this Agreement for any reason, including expiration, InPlay agrees to cease using and to return to Client all whole and partial copies and derivatives of the Proprietary Information, whether in InPlay's possession or control. InPlay will cause all InPlay personnel, independent contractors and consultants providing services hereunder to be bound by this Section 5.

6. TERM AND TERMINATION:

a. This Agreement shall commence on the Effective Date and shall continue in full force for a term of two (2) years unless terminated earlier under this Section 6.

b. This Agreement and any Statement of Work may be terminated for convenience by either party upon thirty (30) days prior written notice to the other party. Failure by either party to comply with any material term or condition under this Agreement or a Statement of Work issued hereunder shall entitle the other party to give the party in default written notice requiring it to cure such default. If the party in default has not cured such default within thirty (30) days of receipt of notice, then the notifying party shall be entitled, in addition to any other rights it may have, to terminate this Agreement (and all Statement of Works issued hereunder) and/or the individual Statement of Work by giving notice effective immediately.

c. Upon termination of this Agreement and/or any Statement of Work, Client shall pay InPlay for all work done and expenses incurred to date, and InPlay shall return to Client, or destroy, at Client's option, all Proprietary Information of Client in its possession and provide to Client all Work Product that has been paid for to the date of termination.

d. Sections 4, 5, 7, 8 and 9 and any accrued rights to payment shall survive any termination or expiration of this Agreement.

7. LIMITATION OF LIABILITY; EXCLUSION OF WARRANTIES:

a. To the maximum extent permitted by applicable law: (a) in no event shall InPlay be liable under any legal theory for any special, indirect, consequential, exemplary, punitive or incidental damages, however caused, arising out of or relating to this Agreement, even if InPlay has been advised of the possibility of such damages; and (b) in no event shall InPlay aggregate liability arising out of or relating to this Agreement (regardless of the form of action giving rise to such liability, whether in contract, tort or otherwise) exceed the fees actually paid by Client hereunder during the six (6) months immediately preceding the date the applicable claim is made by Client.

b. INPLAY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. FURTHER, TO THE MAXIMUM EXTENT

PERMITTED BY APPLICABLE LAW, INPLAY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

8. GOVERNING LAW:

This Agreement is to be construed in accordance with and governed by the internal laws of the State of California without regard to conflicts of law provisions thereof. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be commenced exclusively in a federal court in the Northern District of California or in state court in the city and County of San Francisco, California, and each party hereby irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding.

9. GENERAL:

a. Independent Contractors. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; and the parties shall at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

b. Assignment. The parties' rights and obligations under this Agreement will bind and inure to the benefit of each party and each of their respective successors and assigns.

c. Final Agreement; Amendments; Headings. This Agreement and any statements of work agreed upon by the parties constitute the entire agreement of the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous understandings and agreements relating to its subject matter. This Agreement may not be waived, modified or amended unless mutually agreed upon in a written agreement duly executed on behalf of both parties. The captions to the operative paragraphs of this Agreement are inserted for convenience only and shall not affect the intent of this Agreement.

d. Severability. If any provision of this Agreement is found to be legally unenforceable, such unenforceability shall not prevent enforcement of any other provision of the Agreement.

e. Force Majeure. In the event of an occurrence of an event of force majeure, as the term is generally understood within the information technology industry, InPlay shall have the right to suspend this Agreement and shall have the right, but not the obligation, to extend this Agreement by the length of any such suspension. If an event of force majeure continues for eight (8) consecutive weeks, each party shall have the right to terminate this Agreement.

f. No Implied Waiver. No failure on the part of either party to exercise and no delay in exercising, and no course of dealing with respect to any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any

right, power or privilege under this Agreement preclude the exercise of any other right, power or privilege.

g. Signatures. This Agreement may be executed in two or more counterparts (and by different parties on separate counterparts) each of which shall be an original, but all of which together shall constitute one and the same instrument. Signatures received by facsimile, PDF file or other electronic format shall be deemed to be original signatures.

h. Notices. Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below:

If to **Client**:

Superintendent Ayindè Rudolph
750 San Pierre Way
Mountain View, CA 94043
Email: supt@mvwsd.org

If to **InPlay**:

Rod Hsiao
CEO
14 South Eldorado Street
San Mateo, CA 94401
Email: rod@inplay.org

and

Greg Wolff
President
UnaMesa Association
654 Gilman Street
Palo Alto CA 94301


or at such other address as the party shall specify in writing. Such notice shall be deemed given upon personal delivery, by e-mail (with proof of delivery) or sent by certified or registered mail, postage prepaid, three (3) days after the date of mailing.

<signature page follows>

IN WITNESS WHEREOF, this Agreement has been duly executed on behalf of each party as of the Effective Date.

AGREED AND ACCEPTED:

For CLIENT:

By: 
Signature

Name: Ayindè Rudolph

Title: Superintendent

Date: 4/18/18

For INPLAY:

By: _____
Signature

Name: Greg Wolff

Title: President

Date: _____

Exhibit 1: Proposed Statement of Work

Research has found that 80% of low-income students do not participate in summer programs so the resulting summer learning loss contributes to two-thirds of the academic achievement gap by eighth grade.

The Problem. To counter “summer slide,” the Mountain View Whisman School District (MVWSD) offers a combination of school-run programs and programs delivered by third-parties. These school-funded programs only have capacity to serve a fraction of the district’s enrolled students and parents need help to find other local and affordable alternatives.

Our Shared Goal. The MVWSD leadership seeks to expand family access to quality programs that provide engaging academic and enrichment activities. InPlay is a non-profit that partners with cities and school districts to connect disengaged, low-income children with out-of-school programs to close the academic achievement gap. To help parents, InPlay takes on the burden of collecting and posting program information to a mobile directory so that parents can quickly search, select, and enroll. By connecting families with caring activity providers, InPlay hopes it can help MVWSD build a stronger system of out-of-school time support to promote healthy child education and development.

Objective. The objective of this Statement of Work is to outline our respective roles and responsibilities, and specific deliverables to launch an online activity directory for Summer 2018 and continue the service at least for two years. The final agreed-upon Statement of Work will be included in a final Professional Services Agreement. All InPlay services and pricing listed below are valid until May 15, 2018.

Statement of Work Activity:

1. Access to InPlay

InPlay will grant MVWSD access to InPlay's online software features and database to create an online activity directory for the MVWSD. The software will include currently enabled end-user (i.e. parent/caregiver) features:

- a. Filtered searches of activities in InPlay's database that allows end-users to select activities based on age, price, location, dates, days of week, type of activity, financial aid availability, foreign language, and special needs accommodation.
- b. Individual end-user services: bookmarking, automatic tagging of activities that meet children's age requirements, and email queries to providers.
- c. InPlay reserves the right to add or revise service features to enhance the experience and functionality for end-users.

2. Create custom interim landing page for MVWSD (basic design)

- a. The website landing page for Mountain View can display MVWSD's logo, a preferred hero image, and a description of the MVWSD expanded learning time initiative and its main partners and sponsors.
- b. Provide design consultation session followed by 2 rounds of mockup revisions. (For more complex designs, additional hours will be billed at @ \$90/hour).
- c. Create a dedicated URL for the MVWSD landing page that will be determined jointly with MVWSD. The landing pages will be hosted on InPlay's site.
- d. If InPlay ends up serving a larger region of Santa Clara County that encompasses Mountain View and its adjacent cities, InPlay will work with MVWSD to continue providing a landing page with localized program data.

3. Data collection and ingestion

MVWSD and InPlay will partner to create and implement local publicity and outreach to build awareness of this new service and gain buy-in from relevant activity providers and stakeholders. InPlay will be responsible for following up with providers, ingesting summer camp and after-school provider organization info, program descriptions, and activity schedules into the database. To help manage this process, InPlay and MVWSD organizations shall designate a Project Manager from their respective organizations to oversee marketing and public outreach, coordinate data collection and oversee data entry.

To meet the tight timeline for a summer 2018 launch, priority focus will be placed on ingesting MVWSD-funded programs (if desired) and City of Mountain View-funded programs (e.g. City of Mountain View Recreation and Police Department programs). Other NON-city funded summer programs will be collected and ingested on a best-effort basis because of the limited time available. Program data collection and ingestion will continue thereafter year-round with the goal of building the most comprehensive listing of afterschool and summer camp programs for children and youth ages 0 to 18.

4. Site maintenance.

All ongoing software updates, upgrades, data back-ups, and maintenance will be provided by InPlay.

5. Marketing and Promotion

1. InPlay will provide the MVWSD with a "Launch Kit" with draft language and flyer templates that MVWSD can customize and use to introduce the service in Mountain View.
2. The MVWSD will be responsible for leveraging its relationships with its schools, local network of providers, community-based advocates, and parent organizations to publicize the service to families and gain buy-in from relevant activity providers and stakeholders.

6. Reporting on Usage and Provider Landscape

Every fall, MVWSD leadership and InPlay will review an annual report from InPlay that includes the website usage, most viewed programs, total number of providers ingested segmented by type of activities offered, and five "heat maps" of local program locations segmented by activity type (e.g. reading and writing, STEM, and free/low-cost programs, etc.).

7. Administration

Rod Hsiao will be the primary point of contact for InPlay on all launch planning, design and development activity and designate an experienced Project Manager to support MVWSD with data ingestion. The primary point of contact for MVWSD will be Shelly Hausman.

8. Timing

InPlay will commence work immediately upon signing of the Professional Services Agreement and continue for twenty-four months.

9. Fees

Launching a new online service requires a sustained investment to gain adoption by both families, activity providers, and referral services like teachers, counselors and social service workers. For all the services listed in this Statement of Work, InPlay's service fee is \$10,000 per year for two years, for a total of \$20,000 to be shared evenly with the County of Santa Clara. InPlay will invoice MVWSD \$5,000 for year 1 and \$5,000 for year 2.

At the end of the second year, InPlay will sustain this service for the community by charging activity providers an annual membership fee based on a sliding fee scale.

10. References

We are happy to provide references upon request from our other city/district sponsors.

The quoted fee does not cover ongoing development work that InPlay is designing to improve usability and functionality. So, to raise additional funding, InPlay will be referencing MVWSD as a client in its fundraising communications and grant applications.

11. Help to develop new features

InPlay is all about learning from its partners and user engagement. So, to help us design new features and services, InPlay may request help from MVWSD and its related organizations to do user testing and get feedback on new services to increase access for non-English speakers, connect low-income families with financial assistance, and address other related needs for disadvantaged families.

Background on InPlay Team Members

Rod Hsiao is the Founder of InPlay which is a social enterprise seeking to close the expanded learning time opportunity gap for disadvantaged families. He held senior management roles at BUILD and CompassPoint Nonprofit Services, and consulted with AT Kearney for high-tech clients. Formerly on the San Mateo County First 5 Commission, he developed a passion around education and has served for 12 years on the San Mateo County Board of Education. He graduated from Oberlin College and the Harvard Kennedy School of Government and lives with his family in San Mateo, CA.

Jennifer Leigh is InPlay's Project Manager who oversees data ingestion. She trains and manages InPlay's contractor teams, built our data ingestion ticketing system, and wrote the data entry manual. She has extensive senior technical project management experience working for various high-tech firms. She graduated from Case Western and has done graduate studies in biophysics at SUNY Stony Brook. She and her family live in Seattle, WA.

Mountain View-Whisman School District: 2018 Launch Timeline

Dates	Goal	Lead	Activity
4/1-4/16	Create custom landing pages for MVWSD	MVWSD & InPlay	<ol style="list-style-type: none"> MVWSD delegates a representative for design work and provides InPlay with branding requirements, logos, to include in webpage design. Decide on URL for MVWSD landing page (District selected: MV.inplay.org) InPlay to conduct design session with an initial mock-up based on MVWSD input. InPlay will produce 2nd mock-up and gather additional feedback from MVWSD. InPlay will produce 3rd mock-up for final approval. InPlay will code landing page based on feedback from 3rd mockup. Only minor changes permitted at this point.
	Plan coordinated outreach & publicity campaign	MVWSD, Sup. Simitian & InPlay	<ol style="list-style-type: none"> Conduct pre-launch outreach to providers to announce project and request provider data. Prepare launch publicity plan—details TBD <ol style="list-style-type: none"> Coordinate publicity with MVWSD and Supervisor Simitian’s office. Coordinate school publicity through school respective channels (Shelly Hausman) Other local educational advocacy groups: PTA? Challenge Team? Set up electronic marketing and custom links to track user response rate Reach out to counselors/caseworkers (need SLS and school counselors)
4/1 – 6/1	Collect data	MVWSD InPlay	<ol style="list-style-type: none"> Priority: provide list of district-run and City-funded summer programs. InPlay will do follow up to collect necessary data. Best effort basis: InPlay will compile list of non-City funded Summer 2018 providers and conduct outreach and collection (schools let out 6/1/18) Qualify non-City funded programs for ingestion. (Research providers: no individual tutors, must have structured curriculum with stated learning objectives)
4/1 – 6/7	Data Ingestion	InPlay	Input data, do Q&A for accuracy and completeness. Follow up with providers as needed.

Mountain View-Whisman School District: 2018 Launch Timeline

4/18	Launch site	MVWSD InPlay	<ol style="list-style-type: none"> 1. Announce site launch 4/18 2. Expose MVWSD landing page
Ongoing	Post-Launch	InPlay	<ol style="list-style-type: none"> 1. Continue to add provider schedules, make edits and updates as necessary.
Mid-June	Project debrief	InPlay, MVWSD	<ol style="list-style-type: none"> 1. Evaluate project against success goals; discuss adjustments needed. 2. Begin fall ingestion for afterschool programs.